U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

PUBLIC COPY

File: A76 931 793 Office: VERMONT SERVICE CENTER Date: JAN 29 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded to the director for further action consistent with this decision.

The petitioner, Bond Paint and Chemical, claims to import and export building materials and chemicals. It seeks to employ the beneficiary as its export manager and, therefore, endeavors to classify the beneficiary as a multinational manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

On August 18, 1999, the director denied the I-140 petition for abandonment pursuant to 8 C.F.R. 103.2(b)(13), as the petitioner failed to submit evidence the director requested on April 22, 1999. The petitioner subsequently filed a motion to reopen, pursuant to 8 C.F.R. 103.2(b)(15), which states, in pertinent part, that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5. The director denied the petitioner's motion on February 17, 2000, and informed the petitioner that it could appeal the decision on a Form I-290B, Notice of Appeal.

According to 8 C.F.R. 103.5(a)(6), a field office decision made as a result of a motion may be applied to the Administrative Appeals Unit (AAU) only if the original decision was appealable to the AAU.

In the instant case, the original decision to deny the petition was not appealable to the AAU, as it was based upon the petitioner's abandonment of the petition. Therefore, the AAU does not have jurisdiction to consider the appeal that was filed as a result of the director's denial of the petitioner's motion to reopen.

It is noted that in the director's denial of the petitioner's motion to reopen, the director erroneously informed the petitioner that it had 30 days to file an appeal (33 days if the notice was delivered by mail). The director's error, however, does not, and cannot, supersede the regulation regarding the jurisdiction of the AAU.

This case will be remanded to the director to treat the appeal as a second motion to reopen. The director may request any additional evidence deemed necessary to assist him with the determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The petition is remanded to the director for entry of a new decision in accordance with the foregoing.